

CASE NUMBER:
07 CV 3786

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

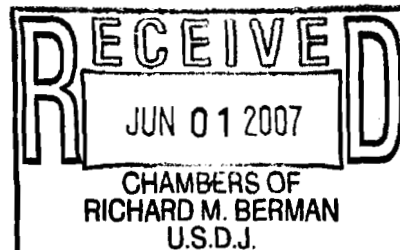
NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT f/k/a THE
NEW YORK STATE DEPARTMENT OF
COMMERCE ECONOMIC
DEVELOPMENT,
an official agency within the administrative
offices of the State of New York,

Plaintiff,

v.

MICHAEL NNAMDI STEWART, an
individual and MOSAYK, INC., a North
Carolina corporation

Defendants,



MEMO ENDORSED

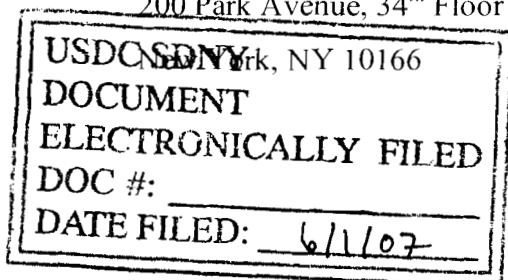
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following parties in this matter (CASE NUMBER: 07 CV 3786), by U.S. First Class mail, postage prepaid, this 30th day of May 2007.

Michael Nnamdi Stewart
4649 Vendue Range Drive
Raleigh, North Carolina 27604

Served Upon:

New York State Department of Economic Development
Greenberg Traurig LLP
Attorneys for Plaintiff
200 Park Avenue, 34th Floor



<u>Defendant's motion to dismiss is denied without prejudice as NOT in accordance with Court's Rules.</u>	
<u>Also, a corporation may NOT proceed pro se. MR Stewart may wish to retain counsel +/or confer with Court's Pro Se office. Conference will be</u>	
<u>SO ORDERED:</u>	<u>Richard M. Berman</u>
<u>Date: 6/1/07</u>	<u>Richard M. Berman, U.S.D.J.</u>
<u>held on 6/22/07 @ 9:30 at 500</u>	
<u>Pearl Street (in person).</u>	

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MICHAEL NNAMDI STEWART, an
individual and MOSAYK, INC., a North
Carolina corporation

Defendants,

"Pro Se Defendant"

CIV. ACTION NO:

07CV 3786

Defendant, Michael Nnamdi Stewart, having an address at 4649 Vendue
Range Drive, Raleigh, North Carolina 27604, is responding to New York State
Department of Economic Development (NYSDED), f/k/a the New York State
Department of Commerce, hereinafter referred to as Plaintiff, Complaint and Demand
for Jury Trial:

MOTION FOR DISMISSAL

1. Defendant, Michael Nnamdi Stewart ("Pro Se" Defendant) in response to the New
York State Department of Economic Development ("Plaintiff), please may the
Court accept this written filing into the case.
2. There are no grounds for Mosayk, Inc being a named party to these proceedings:
 - (a) Mosayk, Inc no longer exist in name as a corporation and,
 - (b) The trademark filed for "I ♥ NC" is in Michael Nnamdi Stewart's name alone.¹

¹ Trademark Applications and Registrations Retrieval (TARR) <http://tarr.uspto.gov/>; Input Serial Number:
78243227

3. Plaintiff is attempting to have the United States District Court Southern District of New York, overturn the decision of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office (the "TTAB") to dismiss Opposition number 91162024.²

GROUND CAPABLE OF RESOLUTION WITHOUT TRIAL

4. Plaintiff still has not established evidence ascertaining registration of their exclusive rights to the phrase and/or logo "I Love" and/or "I♥." Plaintiff could not provide such evidence because the United States Patent and Trademark Office has allowed other mark similar to the plaintiff's mark(s) to be registered prior and no unfavorable results have harmed the plaintiff's mark(s) or their financial goodwill.³ Notably there were approvals for a Registration for I ♥ NEW YORK PIZZA, granted on December 7th, 1999 and two Principal Registrations for I ♥ SB, granted on September 27th, 2005 and November 15th, 2005.⁴
5. Defendant admits the I ♥ NY mark is synonymous with the state of New York, but plaintiff did not prove the I ♥ NC mark is synonymous with the state of New York or its program to promote travel and tourism. The plaintiff has never clearly established how these legal proceeding benefits the taxpayers of the State of New York or how the defendant is using the I ♥ NC mark to make the public believe the plaintiff's and defendant's marks are related.

² [View Attached (17 pages) Decision to Opposition No. 91162024 before Seeherman, Administrative Trademark Judge.]

³ Registration Numbers: 2297518; 2982434; 1294522; 1828516; 2416975; 2788215; 1319495; 2321795; 2524339; 1234075, etc.

⁴ Registration Numbers: 2982434; 3001095; 3014967

GROUND FOR DISMISSAL OF CIVIL ACTION

6. Defendant denies the claims of “There is a Likelihood of Confusion between the Parties’ Marks” because plaintiff’s mark is used “ornamentally on goods.”
Trademark laws protect works when they are used to identify a product or service; plaintiff is trying to only protect the aesthetics of the work as if it was a copyright.
7. Defendant promotes his trademark products, so the public clearly knows the origin of the merchandise and never has the defendant associated the I ♥ NC mark with the plaintiff’s mark(s).
8. Plaintiff does not own the phrase “I LOVE,” which no entity solely possesses or should ever be able to own because it is *public domain* and the First Amendment protects the right to parody.⁵
9. Plaintiff should abandon all notions of:
 - a. Trademark infringement,
 - b. Trademark dilution,
 - c. Common law trademark infringement,
 - d. Common law unfair competition;
10. Plaintiff’s complaint is an effort to needlessly protect their mark(s) from a non-competitor, trying to force the United States District Court Southern District of New York, to set a precedent in overturning the Trademark Trial and Appeal Board of the United States Patent and Trademark Office’s ruling without cause.

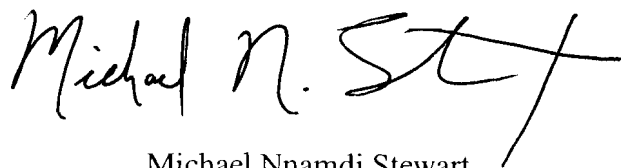
⁵ “BRAND BATTLES: New York ♥ It’s Trademark” from Business Week Magazine, July 2005.
Link: http://www.businessweek.com/magazine/content/05_29/c3943008_mz003.htm

DEMAND FOR DIRECT VERDICT

11. WEREFOR, Defendant request that this Court upholds the Trademark Trial and Appeal Board of the United States Patent and Trademark Office's judgement to "DISMISS" opposition number 91162024 and denying the Plaintiff from any and all course(s) for dispute, jury trial, and claims for relief.⁶

Dated: May 30, 2007

Respectfully Submitted,

A handwritten signature in black ink that reads "Michael N. Stewart". The signature is stylized, with the first letters of the first and last names being capitalized and prominent. The middle initial "N." is written in a smaller, more cursive style.

Michael Nnamdi Stewart
Citizen of the United States of America

⁶ <http://ttabvue.uspto.gov/ttabvue/>